

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAIRY, LLC, a Delaware Limited  
Liability Company,

Plaintiff,

v.

MILK MOOVEMENT, INC., a/k/a Milk  
Moovement, LLC, a foreign corporation,

Defendants.

No. 2:21-cv-02233 WBS-AC

ORDER

MILK MOOVEMENT, INC., a foreign  
corporation,

Counterclaim-Plaintiff,

v.

DAIRY, LLC, a Delaware Limited  
Liability Company,

Counterclaim-  
Defendant.

Before the court is Milk Moovement Inc.'s ("Milk") motion to overrule Dairy, LLC's expert disclosure objection (ECF No. 139) and Dairy, LLC's ("Dairy") motion to compel (ECF No. 141). The joint statement on the motion to compel is located at ECF No. 147 and the joint

statement on the motion to overrule Dairy's expert disclosure objection is located at ECF No. 148. For the reasons set forth below, the motion to compel is GRANTED in part and DENIED in part, and the motion to overrule Dairy's expert disclosure objection is GRANTED.

## **I. RELEVANT BACKGROUND**

### **A. Factual Allegations of the First Amended Complaint**

Dairy brought this action for alleged trade secrets misappropriation under the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1837, and the California Uniform Trade Secrets Act, as well as a claim for intentional interference with contractual relations. ECF No. 48 (First Amended Complaint). The following factual allegations are taken from plaintiff's amended complaint, incorporated here for ease of reference. ECF No. 48.

Dairy, by and through its trade name of Dairy.com, is the leading provider of technology, services, and intelligence platforms to the dairy industry in the United States. Id. at 2. Dairy.com's proprietary software platform enables dairy industry businesses to accurately manage all the complexities of paying dairy producers and haulers, capture milk manifest data in real-time, allocate loads of milk to customers, coordinate the movements of dairy haulers, and comply with federal regulations. Id. The company also provides consulting services on topics like milk marketing and processing, and dairy policy and pricing. Id.

The dairy market is heavily regulated and there are several Federal Milk Marketing Orders (FMMOs) that regulate minimum milk prices paid to dairy producers (i.e., dairy farmers) by milk handlers (e.g., processing plants). Id. Each month, the U.S. Department of Agriculture determines a single weighted average price to be paid to producers for their milk that is part of a milk "pool" under a particular region's marketing order. Id. FMMO pools are designed to attract an adequate milk supply to meet consumer fluid milk needs by allowing dairy farmers to receive a uniform price for their milk regardless of how it was used. Id. Dairy has software that allows users to determine the correct amounts to pay milk producers and generate reports in compliance with the various FMMOs, called its "producer payroll" application. Id. at 2-3. The elements of Dairy's producer payroll application that enable Dairy's clients to make decisions easily and

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1 efficiently about what milk to pool, designate milk for pooling, and generate accurate reports and  
2 invoices to comply with the FMMOs are amongst Dairy's trade secrets. Id. at 3.

3 Milk Moovement is a Canadian company founded in 2018 which utilizes a software  
4 platform focused on the Canadian dairy industry. Id. On plaintiff's information and belief, as of  
5 September 2021, Milk did not have its own fully functional producer payroll application capable  
6 of facilitating compliance with U.S. dairy regulations. Id. Dairy alleges that in September 2021,  
7 Milk induced one of Dairy's customers, California Dairies, Inc. ("CDI") to breach its agreement  
8 with Dairy and share with Milk confidential and proprietary information about the structure and  
9 functionality of Dairy's software, including copies of fifteen reports generated from Dairy's  
10 producer payroll application. Id. On information and belief, the reports and explanations that  
11 Milk received regarding the operation of Dairy's software enabled Milk to misappropriate Dairy's  
12 trade secrets and create its own competitive producer payroll system that implements Dairy's  
13 unique pooling functionality. Id.

14 Dairy makes three claims against Milk: violation of the Defend Trade Secrets Act of 2016,  
15 violation of the California Uniform Trade Secrets Act, and Intentional Interference with  
16 Contractual Relations. ECF No. 48 at 1. Each of these claims survived a motion to dismiss.  
17 ECF No. 76.

18 **B. Description of Trade Secrets in First Amended Complaint**

19 The following is taken from Dairy's first amended complaint, incorporated here for ease  
20 of reference. ECF No. 48. Dairy asserts that FMMOs have created one of the most complicated  
21 commodity pricing regimes in all of U.S. agriculture. ECF No. 48 at 5. FMMO "pools" are  
22 designed to harmonize milk prices for farmers across a similar geography. Id. Each month, some  
23 dairy handlers will have to pay into the pool and others will withdraw funds from the pool when  
24 they pay producers that month's uniform price for fluid milk. Id. In general, handlers look to  
25 avoid "paying into the pool" (while at the same time managing multiple other constraints) to  
26 avoid a direct cost and allow the handler to either (1) pay that money to their farms, or (2) keep  
27 that money to improve the profits of their operation. Id. Pursuant to the FMMO, all Class I milk  
28 must be pooled, but with other classes of milk, handlers can generally elect whether to participate

1 in the pool. Id. Typically, handlers try to obtain the best price for their producer's milk and make  
2 pooling decisions based on whether the market price for a particular class of milk is higher or  
3 lower than the uniform price. Id.

4 Deciding what milk to pool requires tracking many different variables over the  
5 course of several months. The FMMOs impose an array of rules on whether, or under what  
6 conditions, handlers can pool milk. Whether milk can be pooled depends on, among other  
7 things, the type of plant processing the milk, how much milk the handler "pooled" in the  
8 previous month, and whether the handler diverted milk to other plants participating in the pool.  
9 Id. at 6. Dairy handlers must submit monthly reports to an FMMO market administrator  
10 detailing their total milk receipts by class and specifying how much milk was pooled. Handlers  
11 must also track and report to producers on a monthly basis (1) the total pounds of milk received  
12 from that producer by date, (2) the components (e.g., amount of butterfat and protein) contained  
13 in the producer's milk, (3) the minimum payments required to be made to the producer under the  
14 FMMO, (4) the rate used to make payments to the producer (if not the minimum rate), (5) the  
15 amount and nature of any deductions made by the handler, and (6) the net amount of payments to  
16 the producer. Id.

17 Dairy's producer payroll application helps dairy handlers comply with FMMOs  
18 by managing the entire process of scheduling, tracking, collecting relevant data, paying farmers,  
19 and billing customers for milk movements in a particular time period. Id. Additionally, the  
20 software generates key reports to enable handlers to make pooling decisions and report them to an  
21 FMMO market administrator. Id. This application enables Dairy's clients to easily and  
22 efficiently maximize the benefits of FMMO pool participation. Id. This is accomplished by  
23 supporting the pool versus non-pool decisions that dairy handlers make each month around  
24 FMMO participation. Id. Dairy's software includes and implements a methodology for handling  
25 FMMO pooling that is unique in the industry and is Dairy's trade secret.

26 The proprietary pooling functionality in Dairy's software enables Dairy's clients  
27 to maximize the benefits of FMMO pooling participation by enabling them to make more  
28 economically advantageous pooling decisions and accurately document those decisions for

1 reporting purposes. Id. Dairy releases new versions of its producer payroll application every 6-8  
2 weeks because it is constantly making improvements to its software based on customer feedback.  
3 Id. at 7. With respect to the pooling functionality of Dairy’s software in particular, Dairy has  
4 made major revisions to its pooling features at least four times and regularly releases minor  
5 improvements and bug fixes. Id.

### 6 C. Procedural History

7 This case was filed on December 2, 2021. ECF No. 1. The parties entered a stipulated  
8 protective order on February 18, 2022, which was adopted on March 1, 2022. ECF Nos. 54 and  
9 61. On May 25, 2022, Dairy filed a motion to compel discovery and for sanctions. ECF No. 86.  
10 On June 6, 2022, Milk filed a motion for a protective order staying all discovery. ECF No. 93  
11 (denied at ECF No. 121). On June 8, 2022, Dairy filed a second motion to compel. ECF No. 96.  
12 Milk’s motion for a protective order was denied (ECF No. 121), and the two motions to compel  
13 were subsequently resolved by stipulation. ECF No. 130. On July 21, 2022, Milk filed an answer  
14 with amended counterclaims. ECF No. 111. On August 16, 2022, plaintiff filed a third motion to  
15 compel ECF No. 117, which was later withdrawn (ECF No. 127).

16 Three discovery motions are currently pending. Milk’s motion re: improper and late  
17 objection to expert (ECF No. 139) and Dairy’s motion to compel (ECF No. 141) are ripe for  
18 decision, fully briefed, and resolved herein. Also pending is a motion for sanctions filed by Milk  
19 (ECF No. 151) set for hearing on the papers on December 14, 2022 (ECF No. 153) and not at  
20 issue here.

## 21 II. MOTION TO COMPEL

22 The motion to compel presents two key disputes impacting the responses to five requests  
23 for production (“RFPs”). Each dispute is presented below, including the full text and responses  
24 for the RFPs at issue.

### 25 A. Legal Standard

26 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any  
27 party’s claim or defense . . . Relevant information need not be admissible at the trial if the  
28 discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R.

1 Civ. P. 26(b)(1). Evidence is relevant if: (a) it has any tendency to make a fact more or less  
 2 probable than it would be without the evidence; and (b) the fact is of consequence in determining  
 3 the action. Fed. R. Evid. 401. Relevancy to the subject matter of the litigation “has been  
 4 construed broadly to encompass any matter that bears on, or that reasonably could lead to other  
 5 matter that could bear on, any issue that is or may be in the case.” Oppenheimer Fund, Inc. v.  
 6 Sanders, 437 U.S. 340, 351 (1978). Relevance, however, does not establish discoverability; in  
 7 2015, a proportionality requirement was added to Rule 26. Under the amended Rule 26,  
 8 relevance alone will not justify discovery; discovery must also be proportional to the needs of the  
 9 case.

10 Under Fed. R. Civ. P. 37(a), a party may move for an order compelling disclosure or  
 11 discovery if “a party fails to produce documents . . . as requested under Rule 34.” Rule  
 12 37(a)(3)(B)(iv). “The party seeking to compel discovery has the burden of establishing that its  
 13 request satisfies the relevancy requirements of Rule 26(b)(1). The party opposing discovery then  
 14 has the burden of showing that the discovery should be prohibited, and the burden of clarifying,  
 15 explaining or supporting its objections.” See Bryant v. Ochoa, 2009 U.S. Dist. LEXIS 42339 at  
 16 \*3, 2009 WL 1390794, at \*1 (S.D. Cal. 2009). The party opposing discovery is “required to carry  
 17 a heavy burden of showing” why discovery should be denied. Blankenship v. Hearst Corp., 519  
 18 F.2d 418, 429 (9th Cir. 1975).)).

#### 19 B. Analysis: Production Regarding Software Updates

20 The first subject of the motion to compel is framed as: Milk’s Limited Agreement to  
 21 Produce Documents Related to the “Pooling Methodology” (RFP Nos. 15 & 16). The RFPs at  
 22 issue are reproduced here:

#### 23 Request for Production No. 15:

24 DOCUMENTS sufficient to show changes made to YOUR software  
 25 between April 2021 and February 2022, including release notes,  
 26 COMMUNICATIONS about new versions of YOUR software, and  
 COMMUNICATIONS to YOUR customers regarding software  
 changes.

#### 27 Response:

28 Milk Moovement incorporates by reference its General Objections

and its Objections to the Definitions and Instructions, as they apply to this Request. Milk Moovement further objects to the terms “COMMUNICATIONS,” “DOCUMENTS,” “YOU,” and “YOUR” on the grounds set forth in its Objections to Definitions and General Instructions and construes those terms in accordance with those Objections. Milk Moovement also objects to this Request as vague and ambiguous with respect to the terms “changes made” and “software changes” as those terms are undefined and susceptible to differing interpretations. Milk Moovement further objects that this Request is unlimited in geographic scope. Milk Moovement further objects to this Request as seeking information unrelated to any claim or defense of any party in this litigation and unrelated to the subject matter involved in this litigation. Milk Moovement further objects to this Request on the grounds that it is indefinite, overly broad, unduly burdensome, and not proportional to the needs of the case, at least as to temporal scope, because it seeks internal or external communications regarding “changes made” and “software changes” to all of MMI’s software rather than changes specifically relevant to Plaintiff’s claims, and because it seeks information and documents in a format or at a level of detail other than that which is ordinarily kept and maintained by Milk Moovement in its regular course of business because they are not easily searchable. Milk Moovement further objects to this Request to the extent it seeks trade secrets or other confidential or proprietary research, development, commercial, or business information. Milk Moovement further objects to this Request to the extent it seeks information that is protected by the attorney client privilege, the attorney work-product doctrine, the joint defense privilege, the common interest privilege, and/or any other applicable doctrine of privilege or immunity.

Subject to and without waiver of the foregoing general and specific objections, Milk Moovement will produce non-privileged responsive pre-suit documents in its possession, custody or control sufficient to show new features or functionality in MMI’s software, if any, between April 1, 2021 and December 1, 2021 (i.e., pre-lawsuit) related to the “pooling methodology” identified in the Dairy’s First Amended Complaint and as defined in Dairy’s response to Milk Moovement LLC’s Interrogatory No. 1 (identified by Dairy as Interrogatory No. 8), dated September 12, 2022, to the extent such documents exist and can be located after a reasonable search.

Request for Production No. 16:

ALL of YOUR internal COMMUNICATIONS CONCERNING changes made to YOUR software between April 2021 and February 2022, INCLUDING COMMUNICATIONS RELATING TO new features or functionality.

Response:

Milk Moovement incorporates by reference its General Objections and its Objections to the Definitions and Instructions, as they apply to this Request. Milk Moovement further objects to

the terms “COMMUNICATIONS,” “YOU,” and “YOUR” on the

grounds set forth in its Objections to Definitions and General Instructions and construes those terms in accordance with those Objections. Milk Moovement also objects to this Request as vague and ambiguous with respect to the term “changes made” as that term is undefined and susceptible to differing interpretations. Milk Moovement further objects that this Request is unlimited in geographic scope. Milk Moovement further objects to this Request as seeking information unrelated to any claim or defense of any party in this litigation and unrelated to the subject matter involved in this litigation. Milk Moovement further objects to this Request on the grounds that it is indefinite, overly broad, unduly burdensome, and not proportional to the needs of the case, at least as to temporal scope, because it seeks every internal communication regarding “changes made” to all of MMI’s software rather than changes specifically relevant to Plaintiff’s claims, and because it seeks information and documents in a format or at a level of detail other than that which is ordinarily kept and maintained by Milk Moovement in its regular course of business because they are not easily searchable. Milk Moovement further objects to this Request to the extent it seeks trade secrets or other confidential or proprietary research, development, commercial, or business information. Milk Moovement further objects to this Request to the extent it seeks information

that is protected by the attorney-client privilege, the attorney work-product doctrine, the joint defense privilege, the common interest privilege, and/or any other applicable doctrine of privilege or immunity.

Subject to and without waiver of the foregoing general and specific objections, Milk Moovement will produce non-privileged responsive pre-suit documents in its possession, custody or control sufficient to show new features or functionality in MMI’s software, if any, between April 1, 2021 and December 1, 2021 (i.e., pre-lawsuit) related to the “pooling methodology” identified in the Dairy’s First Amended Complaint and as defined in Dairy’s response to Milk Moovement LLC’s Interrogatory No. 1 (identified by Dairy as Interrogatory No. 8), dated September 12, 2022, to the extent such documents exist and can be located after a reasonable search.

Per Dairy’s description, the above RFPs seek documents reflecting changes Milk “made to its software during the 11-month period of CDI’s software transition—changes that are likely to prove that Milk Moovement incorporated Dairy’s trade secret and confidential information into its software (or disprove those allegations, if Milk Moovement is innocent as it claims).” ECF No. 147 at 12. Dairy argues that Milk has improperly limited its response to documents related to Dairy’s pooling methodology, leaving Dairy unable to determine if changes were made to Milk Moovement’s software that replicate other features of Dairy’s producer payroll application or other Dairy software modules that CDI shared with Milk (producer payroll being one of several

1 Dairy software modules that CDI used before switching to Milk). Dairy asserts that these RFPs  
 2 go directly to its “intentional interference with contractual relations claim, which is separate from  
 3 its pooling methodology and trade secret claim. *Id.* at 13. Dairy alleges Milk “intentionally  
 4 requested non-trade secret information about [Dairy’s] software which CDI was not allowed to  
 5 share per its contract with [Dairy] and used that information to create [Milk Moovement’s] own  
 6 software for CDI in place of [Dairy’s] software.” ECF No. 76 at 10 (order by District Judge  
 7 William B. Shubb declining to dismiss Dairy’s intentional interference with contractual relations  
 8 claim); *id.* at 10–13 (finding Dairy’s interference claim plausible); *see* ECF No. 48 (FAC ¶¶ 51–  
 9 53, 75).

10 Milk argues that the RFPs are overbroad because they seek any and all changes made to  
 11 Milk’s software, without restriction to changes that could be possibly related to information CDI  
 12 disclosed to Milk about Dairy. ECF No. 147 at 20. The court agrees that RFPs 15 and 16 are  
 13 overbroad as drafted. While there may be relevant documents that are responsive to these  
 14 requests, there are surely many, many, many more responsive documents that are not relevant. In  
 15 a software-based company there are likely many software updates happening within an 11-month  
 16 period and a great number of these are likely completely unrelated to anything CDI could have  
 17 disclosed. The court agrees with Milk that the inquiry with respect to relevance on the  
 18 contractual interference claim “is what confidential information CDI is alleged to have disclosed  
 19 to Milk Moovement about Dairy” that would be reflected by a software change. *Id.* at 18.

20 Certainly not *every* software change is potentially related to information disclosed by CDI, and  
 21 Milk should not be required to produce the entire haystack so that Dairy can search for the needle.

22 RFPs 15 and 16 are impermissibly overbroad in scope. Dairy must narrow these requests  
 23 to changes that could be plausibly related to something CDI might have disclosed. The motion to  
 24 compel is DENIED as to this dispute.

### 25 C. Analysis: Production of Communications Concerning Dairy

26 The second issue presented by the Motion to compel is framed as: Milk’s Refusal to  
 27 Produce Documents and Communications Concerning Dairy or Its Software (RFP Nos. 19, 20,  
 28 32). The RFPs at issue are reproduced here:

1 Request for Production No. 19

2 ALL DOCUMENTS CONCERNING any analysis of PLAINTIFF  
3 or DAIRY.COM, INCLUDING any competitive analysis.

4 Response:

5 Milk Moovement incorporates by reference its General Objections  
6 and its Objections to the Definitions and Instructions, as they apply  
7 to this Request. Milk Moovement further objects to the terms  
8 “DOCUMENTS,” and “PLAINTIFF” on the grounds set forth in its  
9 Objections to Definitions and General Instructions and construes  
10 those terms in accordance with those Objections. Milk Moovement  
11 further objects to this Request as seeking information unrelated to  
12 any claim or defense of any party in this litigation and unrelated to  
13 the subject matter involved in this litigation. Milk Moovement  
14 further objects to this Request on the grounds that it is indefinite,  
15 overly broad, unduly burdensome, and not proportional to the needs  
16 of the case, at least as to temporal scope, because it seeks every  
17 “analysis” of Milk Moovement’s competitor, regardless of whether  
18 those analyses are related to Plaintiff’s alleged trade secrets or  
19 unspecified non-trade secret confidential information. Milk  
20 Moovement further objects to this Request to the extent it seeks  
21 information that is protected by the attorney-client privilege, the  
22 attorney work-product doctrine, the joint defense privilege, the  
23 common interest privilege, and/or any other applicable doctrine of  
24 privilege or immunity.

25 Subject to and without waiver of the foregoing general and specific  
26 objections, Milk Moovement will meet and confer with Dairy to  
27 better understand the relevancy and scope of this request. In  
28 particular, the request, as phrased, is overbroad and on its face  
unrelated to any claim or defense.

Request for Production No. 20:

ALL DOCUMENTS CONCERNING YOUR knowledge or  
investigation of PLAINTIFF or DAIRY.COM.

Response:

Milk Moovement incorporates by reference its General Objections  
and its Objections to the Definitions and Instructions, as they apply  
to this Request. Milk Moovement further objects to the Request on  
the grounds that it is duplicative of Plaintiff’s Request Nos. 1-7 and  
19. Milk Moovement further objects to the terms “DOCUMENTS,”  
“PLAINTIFF,” and “YOUR” on the grounds set forth in its  
Objections to Definitions and General Instructions and construes  
those terms in accordance with those Objections. Milk Moovement  
further objects to this Request as seeking information unrelated to  
any claim or defense of any party in this litigation and unrelated to  
the subject matter involved in this litigation. Milk Moovement  
further objects to this Request on the grounds that it is indefinite,  
overly broad, unduly burdensome, and not proportional to the needs  
of the case, at least as to temporal scope, because it seeks all analyses

1 of Milk Moovement's competitor, rather than those relevant to  
2 Plaintiff's alleged trade secrets or unspecified non-trade secret  
3 confidential information. Milk Moovement further objects to this  
4 Request to the extent it seeks information that is protected by the  
attorney-client privilege, the attorney work-product doctrine, the  
joint defense privilege, the common interest privilege, and/or any  
other applicable doctrine of privilege or immunity.

5 Subject to and without waiver of the foregoing general and specific  
6 objections, Milk Moovement will meet and confer with Dairy to  
7 better understand the relevancy and scope of this request. In  
particular, the request, as phrased, is overbroad and on its face  
unrelated to any claim or defense.

8 Request for Production No. 32:

9 All DOCUMENTS and COMMUNICATIONS containing  
10 descriptions of the structure, functionality, or organization of  
DAIRY.COM.

11 Response

12 Milk Moovement incorporates by reference its General Objections  
13 and its Objections to the Definitions and Instructions, as they apply  
14 to this Request. Milk Moovement further objects to the terms  
"COMMUNICATIONS" and "DOCUMENTS" on the grounds set  
15 forth in its Objections to Definitions and General Instructions and  
16 construes those terms in accordance with those Objections. Milk  
Moovement further objects to this Request as seeking information  
unrelated to any claim or defense of any party in this litigation and  
unrelated to the subject matter involved in this litigation. Milk  
Moovement further objects to this Request on the grounds that it is  
overly broad, unduly burdensome, and not proportional to the needs  
of the case, at least as to temporal scope, and because it seeks all  
documents discussing the structure, functionality, or organization

19 of Dairy.com, including publicly available information, rather than  
20 those relevant to Plaintiff's alleged trade secrets or unspecified non-  
trade secret confidential information. Milk Moovement further  
21 objects to this Request to the extent it seeks information that is  
protected by the attorney client privilege, the attorney work-product  
22 doctrine, the joint defense privilege, the common interest privilege,  
and/or any other applicable doctrine of privilege or immunity.

23 Subject to and without waiver of the foregoing general and specific  
24 objections, Milk Moovement will meet and confer with Dairy to  
25 better understand the relevancy and scope of this request. In  
particular, the request, as phrased, is overbroad and on its face  
unrelated to any claim or defense.

26 The requests at issue in this portion of the dispute, RFP Nos. 19, 20, and 32, request  
27 Milk's internal documents referencing Dairy or its software, including (but not limited to)  
28 competitive analysis, as well as external communications with third parties about the same. Dairy

1 asserts that these requests are relevant and proportional for several reasons. First, Dairy asserts  
2 responsive documents go to the heart of its claims because they would reveal how Milk viewed it  
3 software relative to Dairy's, which goes to intent/absence of mistake. ECF No. 147 at 22. Dairy  
4 further contends that documents will likely also reflect what information was shared by CDI. Id.  
5 at 23.

6 Milk's counterargument is that these RFP are overboard, irrelevant, and disproportionate  
7 to the needs of the case. ECF No. 147 at 24. Milk contends that because these RFPs "demand  
8 every Milk Moovement document that references Dairy or reflects knowledge about Dairy,  
9 regardless of the source of that knowledge or whether it has anything to do with any alleged  
10 misappropriation of trade secrets or interference with Dairy's contract with CDI" they will  
11 capture publicly disclosed information which cannot be relevant to the claims, which relate to  
12 improperly disclosed information. Id. Milk would have the court require Dairy to limit its  
13 request by including "some qualification that such documents concern Milk Moovement's  
14 knowledge of any Dairy trade secrets alleged to be at issue or are based on information that CDI  
15 allegedly improperly provided to Milk." Id. at 25.

16 The court agrees with Dairy and does not find RFP Nos. 19, 20, or 32 overbroad; instead,  
17 they are reasonably calculated and sufficiently narrowly tailored to lead to relevant evidence  
18 because *any* documents from Milk referencing or analyzing Dairy could quite reasonably go to  
19 intent/absence of mistake and thus relate directly to Dairy's claims. Unlike the requests above  
20 seeking documents regarding *any* software updates which would almost certainly include an  
21 abundance of information entirely unrelated to this case, the requests seeking *any* reference to  
22 Dairy can be expected to produce documents related to Milk's intent, actions, and assessments  
23 with respect to Dairy. Accordingly, the court finds the RFPs are reasonably tailored to produce  
24 relevant evidence. The motion to compel on this issue is granted.

### 25 III. MOTION RE: DISCLOSURE OBJECTION

26 Milk asks the court to overrule Dairy's "improper and untimely objection to  
27 Milk Moovement's disclosure of any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"  
28 information to its retained outside expert, Sara Dorland, in her capacity as an "Expert" under the

1 terms of the Stipulated Protective Order (Dkt. 54, 61) (“Protective Order”). ECF No. 148. Milk  
2 argues “Dairy has no basis to object to Ms. Dorland because she is not a competitor of Dairy, nor  
3 is her firm, and Dairy objected too late. Dairy seeks to deny Milk Movement the opportunity to  
4 present expert opinions regarding the dairy industry, which go to the heart of Dairy’s claims.” Id.

5 The parties agree that Milk disclosed Ms. Dorland as an expert to Dairy on June 15, 2022,  
6 informing Dairy that it intended to disclose to Ms. Dorland in her capacity as an expert  
7 documents Dairy designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
8 “HIGHLY CONFIDENTIAL – SOURCE CODE” that relate to Dairy’s trade secret and  
9 intentional interference claims, as well as Milk’s declaratory judgment claims. ECF No. 148 at 5,  
10 7; Oakley Decl., Ex. 1 at 11-12. The parties also agree that on June 17, 2022, Dairy  
11 communicated to Milk that it believed the disclosure was premature because no such confidential  
12 documents had yet been produced. ECF No. 148 at 5, 8. Milk disagreed, arguing that it should  
13 be able to notice preemptively the disclosure of highly confidential documents, even if that  
14 category of documents is ultimately turns out to be a null set. Patchen Decl. Ex. 1 (L. Shinn Jun.  
15 17, 2022 email) (ECF No. 148-4 at 15). The relevant email communications are located at ECF  
16 No. 148-2 at 16-17. On June 21, 2022 Dairy produced its first documents designated highly  
17 confidential, and on June 24, 2022, Dairy objected to Ms. Dorland receiving confidential  
18 documents on the basis that Ms. Dorland is a competitor. ECF No. 148 at 5, 8. Milk argues that  
19 Dairy’s objection was untimely because it was made 9 days after the initial disclosure, and the  
20 Stipulated Protective Order limits the parties to 7 days for objections unless otherwise agreed in  
21 writing.

22 Timeliness is the threshold issue that must be addressed in this dispute; if Dairy’s  
23 objection was untimely, it was not valid per the terms of the parties’ stipulation. The relevant  
24 portion of the Stipulated Protective Order (ECF No. 54) is “Section 7.4 Procedures for Approving  
25 or Objecting to Disclosure of ‘HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY’ or  
26 ‘HIGHLY CONFIDENTIAL – SOURCE CODE’ Information or Items to Experts or Other  
27 Outside Counsel.” This section reads:

28 ////

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert or Other Outside Counsel (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies **the general categories** of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert or Outside Counsel, (2) with respect to Experts, sets forth the full name of the Expert and the city and state of his or her primary residence and with respect to Other Outside Counsel, sets forth their full name, (3) with respect to Experts, attaches a copy of the Expert’s current resume, (4) identifies the Expert’s or Other Outside Counsel’s current employer(s), (5) with respect to Experts, identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years, and (6) with respect to Experts, identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Expert or Other Outside Counsel unless, **within 7 days of delivering the request, the Party receives a written objection from the Designating Party.** Any such objection must set forth in detail the grounds on which it is based.

ECF No. 45 at 12 (emphasis added).

Dairy’s objection, 9 days after the disclosure, was not timely per the plain language of the Stipulated Protective Order and is therefore without effect. Per the terms of the protective order, Milk identified the “general categories” of confidential documents that would be disclosed. ECF No. 148-2 at 16-17. Dairy’s prematurity objection asserts that “[i]f there is no material that you currently have that you would like to disclose to them, this disclosure notice is premature” because of the requirement that “categories of material” be disclosed. ECF No. 148-2 at 16. Dairy reads a requirement into the Stipulated Protective Order that simply isn’t there; there is nothing in the stipulation that renders Milk’s disclosure premature or prevents Milk from anticipating that confidential documents will be produced in identified categories. The parties

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1 could have drafted a stipulated protective order that required identification of specific documents  
2 to be disclosed, but they did not.

3 Dairy, the holder of the pre-produced documents, certainly had enough information from  
4 the June 15, 2022 disclosure to make a timely objection. Further, on June 17, 2022, Milk  
5 confirmed to Dairy in writing that it did not believe its request to be premature and that it  
6 believed the objection clock to be ticking. ECF No. 148-2 at 15. Dairy had ample opportunity to  
7 object before the agreed deadline to object ran. The court agrees with Milk that Dairy's objection  
8 is untimely and therefore overrules the objection.


9 **IV. CONCLUSION**

10 Dairy's Motion to Compel (ECF No. 141) is GRANTED in Part and Denied in Part as  
11 follows: the motion is DENIED as to RFPs 15 and 16. The motion is GRANTED as to RFPs 19,  
12 20, and 31, and Milk shall produce all responsive documents within 14 days of this Order.

13 Milk's Motion regarding Dairy's objection regarding document disclosure to Milk's  
14 expert (ECF No. 139) is GRANTED and Dairy's objection is OVERRULED.

15 IT IS SO ORDERED.

16 DATED: November 16, 2022

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18 ALLISON CLAIRE  
19 UNITED STATES MAGISTRATE JUDGE  
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